



January 15, 1991

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

The Honorable Manuel Lujan, Jr.
Secretary of the Interior
Interior Building
Washington, DC 20240

Dear Secretary Lujan:

My letter to you dated January 7, 1991 contained a recommended reallocation of uncontracted Central Arizona Project non-Indian agricultural water. In the letter I indicated that the recommendations would be supplemented by a report to further explain the reallocation.

Enclosed is a copy of the report, "Arizona Department of Water Resources Recommendation to the Secretary of the Interior on Reallocation of Central Arizona Project Non-Indian Agricultural Water, January 1991."

This report should be considered as a part of the reallocation recommendation.

Sincerely,

A handwritten signature in dark ink, appearing to read "N.W. Plummer".

N.W. Plummer
Director

Enclosure

NWP/CLL/mld1

cc: Honorable Rose Mofford, Governor of State of Arizona
(w/encl.)
Dennis Underwood, Commissioner, U.S. Bureau of Reclamation
(w/encl.)
Ed Hallenbeck, Regional Director
Lower Colorado Regional Office (w/encl.)
Bob Towles, Project Manager, Arizona Projects Office
(w/encl.)
Tom Clark, General Manager, Central Arizona Project (w/encl.)



ARIZONA DEPARTMENT OF WATER RESOURCES
RECOMMENDATION TO THE SECRETARY OF THE INTERIOR -
ON REALLOCATION OF CENTRAL ARIZONA PROJECT
NON-INDIAN AGRICULTURAL WATER

JANUARY 1991



TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
PROCEDURE.....	2
REALLOCATION METHODOLOGY.....	4
ENTITIES WHO REQUESTED BUT ARE NOT INCLUDED IN THE REALLOCATION	5
Franklin Irrigation District/Gila Valley Irrigation District.....	5
Tohono O'Odham Indian Nation of Arizona.....	6
Gila River Indian Community.....	6
Silver Bell Irrigation and Drainage District.....	7
Paloma Investments, Ltd.....	7
Gila Bend-Dendora Valley Water Users Association.....	8
NEW ENTITIES INCLUDED ON THE REALLOCATION.....	11
State Land Department.....	11
Picacho Pecans.....	11
Rick Aguirre.....	11
McMullen Valley Water Conservation and Drainage District.....	12
Roosevelt Irrigation District.....	15
RESPONSE TO COMMENTS.....	17
Loss of Municipal and Industrial Conversion Opportunities.....	17
The Reallocation Should Replace Uncontracted CAP Water within the Same AMAs.....	18
Allottees Must Demonstrate Financial Capability.....	19
Water Should Be used Directly for Irrigation.....	19
Exclude New Entities.....	19
Make Allocations to Indian Reservations or Hold for Settlement Negotiation.....	20
Compliance with the Administrative Procedures Act.....	20
The Dependable Supply to RWCD Should Be Reduced.....	21
Effects of RRA Should Be Considered.....	22

LIST OF ILLUSTRATIONS

TABLE

1	Proposed Reallocation of Non-Indian CAP Agricultural Water.....	3
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FIGURE

1	Water Level Data (Gila Bend Area).....	10
2	Water Level Data (McMullen Valley Area).....	14

INTRODUCTION

The February 10, 1983 decision by Secretary of the Interior, James Watt, allocated the Central Arizona Project (CAP) non-Indian agricultural supply among 23 entities. Ten of the entities have entered into subcontracts for a supply. The combined entitlement of entities which have subcontracts represents 70.7% of the available supply. Additionally, 5.48% of the original supply is allotted to two entities for which the subcontracting process is not complete. The remaining 23.82% of the original agricultural supply was offered to entities which have declined a subcontract.

The 1983 allocation and the subcontracts for CAP agricultural supplies indicate that the Department of Water Resources (Department) will recommend a reallocation of uncontracted CAP water. Further, the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (SRPMICSA) directed the Secretary of the Interior (Secretary), within 30 days from the enactment, to request that the Department make its recommended reallocation of non-Indian CAP agricultural water.

There has been an interest in proceeding with this reallocation for several years. One of the principal reasons that the reallocation was not recommended sooner is that it has not been finally determined which entities receiving an allocation in 1983 will enter into subcontracts. At this time there still remains 5.48% of the supply which may or may not be contracted. The Department believed that it would be best to make an allocation when there was more certainty regarding the amount of CAP supply involved. Also, the Department has been asked by the parties participating in Indian water rights settlements not to make the reallocation recommendation until ongoing negotiations towards Indian water rights settlements have been completed. Nevertheless, the reallocation recommendation is being completed at this time because of the decision of the Arizona Superior Court in Pinal County in the case, Central Arizona Irrigation and Drainage District et al. v. Plummer, No. CIV-38812. A stipulated form of judgment in this lawsuit provides that the recommended reallocation shall be made to the Secretary no later than January 7, 1991. The recommended reallocation was transmitted to the Secretary by the Director in a letter dated January 7, 1991. This report further supports that recommendation.

PROCEDURE

The Department began preparing for the reallocation in 1989. A July 11, 1989 memorandum from the Director was distributed to all parties interested in the process. The memo outlined alternative methods for computing revised allotments in the reallocation. An open meeting followed to discuss the alternatives, and consensus was reached that CAP eligible acres times a project wide average water duty should be used to determine CAP entitlements. On November 21, 1990, a second memorandum was distributed setting forth a preliminary recommendation. An open meeting was held December 5, 1990 to discuss the proposal and to receive oral comments. Written comments on the process were accepted until December 14, 1990.

A number of entities commented on the proposed methodology and suggested criteria by which entities should be included or excluded from the Department's recommended reallocation. Most entities supported the reallocation methodology as proposed in the November 21, 1990 memorandum.

The Department required that three basic conditions be met if an entity was to be included within the reallocation. These were: 1) the applicant's service area must be located in a basin with declining groundwater supply, 2) the applicant must supply water for non-Indian agricultural use, and 3) the applicant's service area must contain lands eligible to be irrigated with CAP water. All subcontractors plus the two entities which received an allocation in 1983 but have yet to contract for that allocation met these basic conditions and were included in the reallocation. In addition to these entities, ten other entities requested consideration during the reallocation. Four entities met the conditions and were also included. Table 1 shows the entities which qualified based on these two conditions.

The Department also recommends that prior to the Secretary's offering a subcontract to the new entities, those entities should accomplish the following:

- show financial feasibility of irrigating agricultural land with CAP water;
- relinquish Hoover "B" electric power;
- demonstrate that a mechanism will be enacted to prohibit increases in irrigated acreage from aquifers affected by irrigation in the entity's service area.

TABLE 1

PROPOSED REALLOCATION
NON-INDIAN CAP AGRICULTURAL WATER

SUBCONTRACTOR	CAP ELISIBLE ACRES 1	ACRES SERVED BY AVAILABLE WATER SUPPLY 2	CAP ELISIBLE ACRES LESS ACRES IRRIGATED WITH AVAILABLE SUPPLY 3	ALLOCATION BASED UPON COLUMN 3 4	RECOMMENDED ALLOCATION (2) 5
CENTRAL ARIZONA	85,979	0	85,979	23.00%	22.74%
CHANDLER HEIGHTS	1,119	0	1,119	0.30%	0.30%
FICO	6,194	0	6,194	1.66%	1.64%
HARQUAHALA	33,007	0	33,007	8.93%	8.73%
HOHOKAM	26,356	0	26,356	7.05%	6.97%
MARICOPA-STANFIELD	85,994	0	85,994	23.01%	22.75%
McMULLEN VALLEY	12,000 (1)	0	12,000	3.21%	3.17%
NEW MAGMA	27,310	0	27,310	7.31%	7.23%
PICACHO PECANS (ASLD)	2,022 (1)	0	2,022	0.54%	0.54%
AGUIRRE (ASLD)	423 (1)	0	423	0.11%	0.11%
QUEEN CREEK	18,112	0	18,112	4.85%	4.83%
RID	34,500 (1)	15,370	19,130	5.12%	5.07%
RWCD	30,322	6,389	23,933	6.40%	6.33%
SAN CARLOS	45,254	19,370	25,884	6.93%	6.84%
SAN TAN	2,826	0	2,826	0.76%	0.77%
TONOPAH	3,470	0	3,470	0.92%	1.98%
TOTALS:	414,288		373,759	100.00%	100.00%

NOTES: (1) ESTIMATED.

(2) THE DIFFERENCE BETWEEN COLUMN 4 AND COLUMN 5 REFLECTS AN ADJUSTMENT SO NO SUBCONTRACTOR RECEIVES LESS ALLOCATION PERCENTAGE THAN IT'S EXISTING SUBCONTRACT ENTITLEMENT. THIS APPLIES ONLY TO TONOPAH, SAN TAN AND QUEEN CREEK IRRIGATION DISTRICTS.

REALLOCATION METHODOLOGY

The basis for the recommended allocation shown on Table 1 is lands eligible to be irrigated with CAP water (CAP eligible acres) reduced to reflect acreage inside each subcontractor's service area served with a locally available supply and then adjusted to recognize existing subcontract entitlements.

CAP eligible acres are lands within the subcontractor's service area which may be legally irrigated with groundwater under state law and are eligible to receive CAP water under federal law. In Active Management Areas (AMAs) created under Arizona's Groundwater Code, the acres of land considered eligible under state law are lands with an Irrigation Grandfathered Right. In Irrigation Non-Expansion Areas (INAs) (Harquahala Irrigation District and part of McMullen Valley Water Conservation and Drainage District), eligible lands have a Notice of Irrigation Authority. There are no state groundwater eligibility restrictions outside of AMAs or INAs. Lands eligible under federal law are those classified as irrigable, in holdings of five acres or larger, and having a history of irrigation between September 30, 1958 and September 30, 1968. For all but four of the entities included within the reallocation, eligible acres have been certified by the Bureau of Reclamation. For the remaining four entities, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, and the two parcels of state leased land, an estimate of eligible acres was used. Eligibility as defined under the Reclamation Reform Act (RRA) was not considered.

Three subcontractors have locally available water supplies. The allocation base for these subcontractors was determined by reducing CAP eligible acres in each service area by the amount of this supply. For the San Carlos Irrigation and Drainage District (SCIDD) and the Roosevelt Water Conservation District (RWCD), the adjustment to eligible acres represents the average annual surface water supply diverted divided by a water duty of 5.4 acre-feet per acre, which is the same criterion used in the 1983 allocation. As discussed later under the section on comments, the RWCD supply was not changed to reflect provisions of SRPMICSA. The average annual water supply available to SCIDD was 104,600 acre-feet and to RWCD 34,500 acre-feet. For the Roosevelt Irrigation District (RID), it was assumed that some effluent would be available to meet future demand and that some groundwater could be pumped without significantly impacting the aquifer. RID's adjustment is discussed further under the section on RID.

Column 4 of Table 1 shows an allocation based upon eligible acres reduced for locally available supplies. This would have been the allocation recommended by the Department, however, for one entity, Tonopah Irrigation District the entitlement developed

by this method was less than the entitlement in the district's current subcontract. This situation was created because the district's area was reduced substantially subsequent to the original allocation. In order to conform to the existing subcontract, Tonopah Irrigation District's entitlement was fixed at the amount in the subcontract. This required a downward adjustment to the other applicants' entitlements proportionate to their share of the allocation in Column 4. No subcontractor's entitlement was adjusted to an amount less than the existing subcontract. This limit was reached for San Tan and Queen Creek Irrigation Districts. The results of this adjustment are shown in Column 5 of Table 1, which becomes the recommended allocation.

It is possible that one or more of the entities which received a recommended reallocation may request a reduced entitlement or may decide not to enter into a contract. It is also possible the number of actual eligible acres of one or more of the entities which currently do not have subcontracts will be less than that used in the recommended reallocation. If one or more of these situations should arise, the Department recommends that the allocations be adjusted consistent with the methodology used in this reallocation.

ENTITIES WHO REQUESTED BUT ARE NOT INCLUDED IN THE REALLOCATION

The Department's recommendation does not include an allocation for requests received from six entities. Each entity's request and the reasons for exclusion are discussed in this section.

Franklin Irrigation District/Gila Valley Irrigation District

In a letter to the Department dated May 22, 1990, the Franklin and Gila Valley Irrigation Districts jointly requested an allocation of CAP non-Indian agricultural water. The request was for a supply for the approximately 40,000 acres irrigated in the two districts. The current water supply for the landowners in these districts is from direct diversions from the Gila River and from groundwater. Gila River water is diverted under water rights adjudicated in the Gila Decree.

On July 17, 1990, the Department responded and indicated it could not support an allocation because no evidence was found of long-term groundwater overdraft in either of the two districts. Neither district has protested our position. Because the principal purpose of CAP is to replace the use of groundwater

where overdraft conditions exist, the Department has not included either district in the recommended reallocation of CAP water.

Tohono O'Odham Indian Nation of Arizona

The Chuichu area of Sif Oidak District of the Tohono O'Odham Indian Reservation has a contract with the Secretary for 8,000 acre-feet of CAP Indian water. The contract between the Nation and the Secretary is dated December 11, 1980.

By letter dated April 29, 1983, the Nation requested an additional 12,000 acre-feet of non-Indian agricultural water for the Chuichu area. In a letter to the Nation dated May 16, 1983, the Department indicated that it had some concerns with including the Chuichu area in the non-Indian agricultural reallocation, but that consideration would be given to their request.

After further review of the matter, the Department has concluded that the Secretary has made his decision regarding the distribution of water among Indian tribes, municipal and industrial users, and non-Indian agricultural users. It is the Department's position that in addition to other reasons such as the language contained in the agricultural subcontract and the SRPMICSA, which may preclude the use of non-Indian water by Indian tribes, to include the Nation's request in the reallocation of the non-Indian agricultural water would circumvent the intent of the initial allocation. Therefore, the Department has not included the Nation in the recommended reallocation of CAP water.

Gila River Indian Community

On May 2, 1990, the Gila River Indian Community adopted Resolution CR-69-90 requesting that the Secretary allocate to the Community all of the uncontracted-for non-Indian agricultural water from CAP. This allocation would be part of a settlement of the Community's water rights claims. On the same day the Community adopted Resolution GR-68-90, which stated opposition to the reallocation of non-Indian agricultural water unless the reallocation was made pursuant to and part of legislation enacted to settle the water rights claims of the Community. For the same reason that the Department did not recommend an allocation to the Tohono O'Odham Indian Nation, the recommended reallocation does not include water for the Gila River Indian Community. As to the timing of the recommendation, as discussed earlier, the Department agreed to recommend the reallocation by January 7, 1991.

Silverbell Irrigation and Drainage District

Prior to the Department's 1982 allocation recommendation, Silverbell Irrigation and Drainage District indicated that it was interested in receiving a CAP allocation. The Department did not recommend an allotment for the district. By letter dated September 1, 1983, the district again indicated an interest in receiving a CAP non-Indian agricultural allotment during the reallocation. In a recent conversation with the Department staff the district's president indicated the district is no longer interested in receiving CAP water. No evaluation was made of the district's eligibility, and it has not been included in the reallocation.

Paloma Investments Ltd.

Paloma Ranch (Paloma), which is owned by Paloma Investments Ltd., is located southwest of Phoenix along the Gila River near the Town of Gila Bend. The ranch is outside the Phoenix AMA. Paloma diverts and transports surface water from the Gila River at Gillespie Dam, pursuant to surface water decrees. The surface water supply originates from tailwater from upstream irrigation, effluent from the Phoenix metropolitan area discharged to the Gila River, and to a lesser degree from flood flows. Paloma also pumps groundwater to meet its agricultural water demand. The groundwater is pumped from numerous wells located along a 39 mile concrete-lined canal that transports water from its origin at Gillespie Dam to its terminus west of Paloma headquarters. It is estimated that on the average 35,000 acre-feet per year of surface water is available at Gillespie Dam for diversion to Paloma.

On November 30, 1990, Paloma applied to the Department for a CAP non-Indian agricultural water allocation and claimed 15,000 acres had a history of irrigation during the required 1958-1968 period. In subsequent correspondence dated December 14, 1990, Paloma modified its irrigated acreage claim to 23,000 acres. This acreage appears reasonable based upon the information available to the Department.

Paloma has indicated two possible options for the delivery of CAP water. The first would be a direct pipeline from the Hayden-Rhodes Aqueduct to Gillespie Dam where the water would be diverted into the existing fully-lined canal. The second, and probably the most economic option, would be to enter into an effluent exchange agreement with the City of Phoenix, whereby effluent from the city's 91st Avenue treatment plant would be delivered by pipeline to the ranch's canal at Gillespie Dam. In return, Paloma's CAP supply would be delivered to the City of Phoenix directly from the Hayden-Rhodes Aqueduct.

In analyzing Paloma's request, the deciding issue was the need for a CAP supply for the ranch's irrigated lands,

considering the availability of surface water and groundwater to support agriculture in the Gila Bend Basin.

There have been recent declines in the groundwater levels in the vicinity of Paloma. However, over the last 20 years the groundwater table has remained stable for most of the Gila Bend Basin. This has been caused by several factors, including the flood on the Gila River in the late 1970s and early 1980s and the current effluent discharges to the Gila River by cities in the Phoenix metropolitan area. It is argued that these supply sources will not continue in the future because of programs for effluent reuse in the Phoenix AMA, water quality regulations regarding future discharges of effluent, and expected reductions in flood releases in the Gila River because of CAP Plan 6 facilities. There is no certainty regarding any of these scenarios. Additionally, a significant amount of water is stored in the aquifer which serves as a source of water for Paloma and is available for future use.

In 1981, the Department was petitioned to create an Irrigation Non-Expansion Area in the Gila Bend Basin. After conducting hydrologic studies and holding a hearing on the matter, the Director on February 12, 1982, found that there was sufficient groundwater available to provide a reasonably safe supply of water for irrigation of cultivated lands in the area. The petition was denied. Monitoring of the groundwater conditions since the 1982 decision has shown no significant degradation of the groundwater supply in a large part of the area.

When making the decision on whether to allocate CAP water to Paloma, groundwater availability became the major determining factor. Overall, the basin is not experiencing the problems associated with critical groundwater overdrafting. The Department believes that the findings made in 1982 remain valid and there is sufficient water in the area to irrigate the currently cultivated lands. Therefore, the recommended reallocation does not include CAP non-Indian agricultural water for this entity.

Gila Bend-Dendora Valley Water Users Association

The Gila Bend-Dendora Valley Water Users Association is comprised of a group of landowners within the Gila Bend Basin and Dendora Valley. The area is located outside the Phoenix AMA along the Gila River and extends from Gillespie Dam south and west to Dendora Valley located west of Painted Rock Dam.

On November 16, 1990, the association made application on behalf of the landowners to be considered for an allocation for CAP non-Indian agricultural water. The application was supported

by ten landowners between Gillespie and Painted Rock Dams. The request claimed that the landowners irrigated 15,140 acres during the 1958-1968 time frame.

The Department reviewed the request and found that some of the acreage was never farmed. This review indicated that about 13,000 acres may have been irrigated during the requisite time frame. The association's application did not identify any eligible farmland within the Dendora Valley area nor did it request the inclusion of any additional landowners in its subsequent letter of December 13, 1990.

The cropland irrigated by association landowners is served by surface water and groundwater. Surface water rights for diversions from the Gila River at Gillespie Dam make up a significant portion of the water used to irrigate the area. This surface water supply originates from tailwater from upstream irrigation, effluent from the Phoenix metropolitan area discharged to the Gila River, and to a lesser degree from flood flows.

Figure 1 shows the recent changes in groundwater levels in a portion of the Gila Bend Basin. Water levels have increased in this area over the past 20 years. It has been argued that this trend might change in the future if the amount of effluent discharged to the river in the Phoenix metropolitan area ceases and flood flows are reduced. However, as discussed under Paloma, there is a significant amount of groundwater stored in the aquifer, which would support future agricultural development.

In effect, the situation related to current water supplies and uses, and the proposed delivery of the requested CAP allocation for the Gila Bend-Dendora Valley Water Users Association is essentially the same as for Paloma. Water supplies are derived from groundwater and from surface water diverted at Gillespie Dam; groundwater levels in much of the area have been rising; CAP water would probably be supplied through an exchange for effluent from the Phoenix area; and the Department's 1982 decision that there is sufficient water in the area to irrigate the currently cultivated lands is still valid. When making the decision on whether to allocate CAP water to the association, the availability of groundwater to meet the demand in the Gila Bend Basin was the determining factor. The Department is therefore not including this area in its recommended allocation of CAP water.

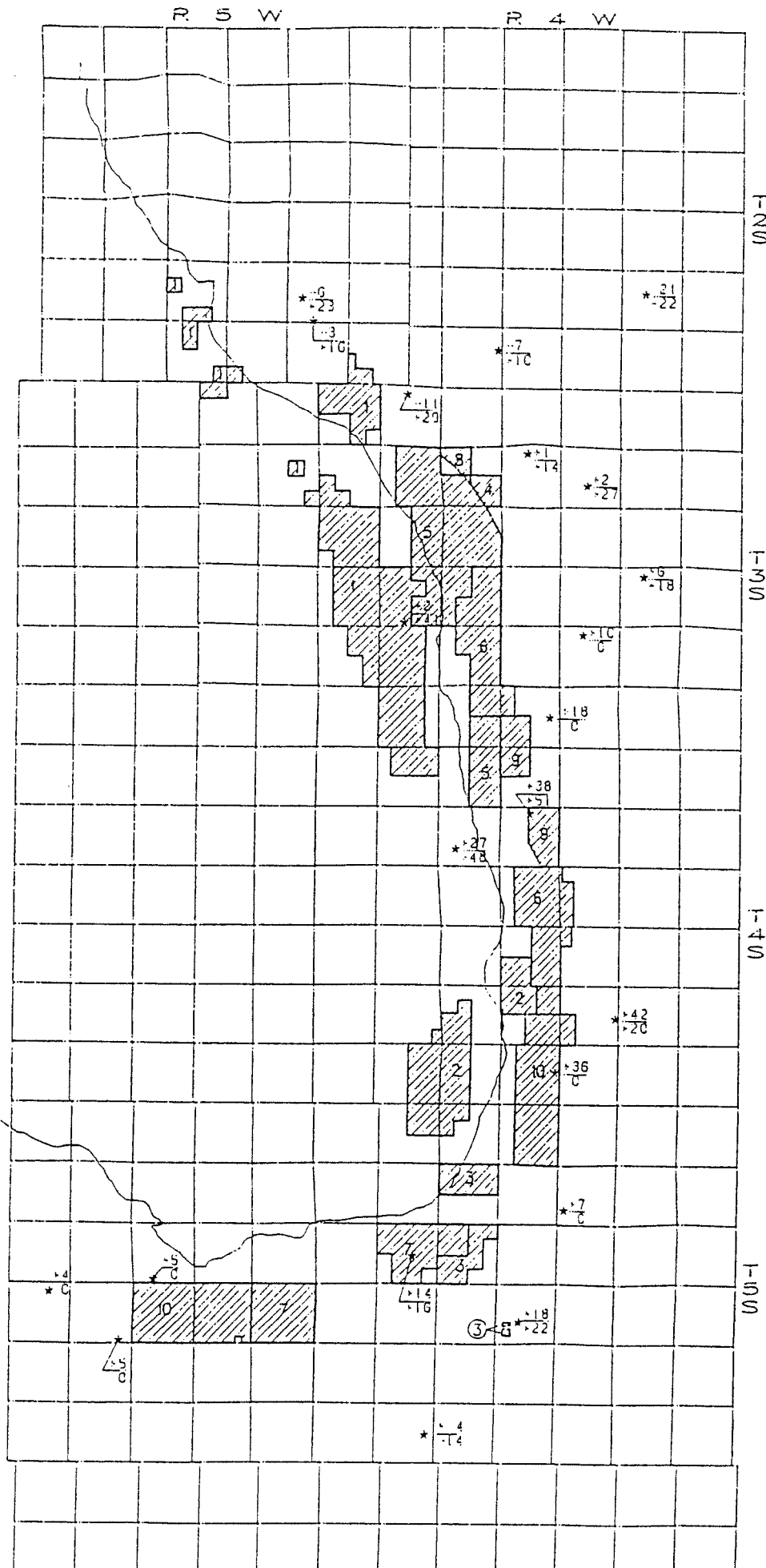


FIGURE 1

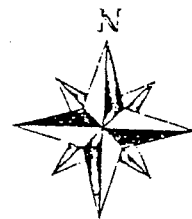
WATER LEVEL DATA

(Gila Bend Area)

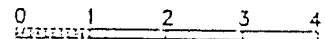
LEGEND

- 1 A Tumbling T Ranches
- 2 John Fornes
- 3 Polly Getzwiller
- 4 Chris John
- 5 Deimar John
- 6 Deon Layton
- 7 L3X Farms
- 8 Charles Miccia
- 9 Russell Badley Farms, Inc.
- 10 Tilley Farms, Inc.
- + indicates rise
- indicates declines

*-1C water level change 1979-89
 +1C water level change 1969-89

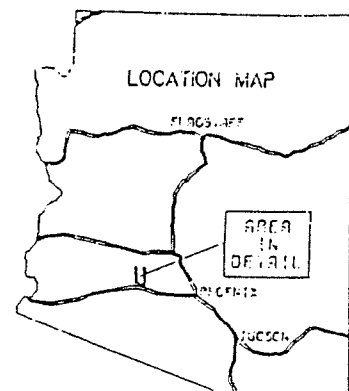


SCALE IN MILES



DECEMBER 28, 1990

Gene M. Deines



NEW ENTITIES INCLUDED IN THE REALLOCATION

The Department is recommending that three entities without a current allocation or subcontract receive an allocation and an offer to subcontract for CAP non-Indian agricultural supply. Each of these are discussed in this section.

State Land Department (Picacho Pecans and Rick Aguirre)

Picacho Pecans (Lease #01-00694). Picacho Pecans lands are located in southern Pinal County. The specific State Land Department lease for which a CAP supply is sought is located in the Tucson AMA. The lease is comprised of approximately 2,066 acres with 2,022 acres determined to be eligible to receive CAP agricultural water. The CAP aqueduct crosses the eastern portion of the lease.

In July 1982, after the Department made its recommendation for CAP allocations to the Secretary but prior to the Secretary's allocation, Picacho Pecans requested to be considered for an allocation of CAP agricultural water. The Director responded by indicating the timing of the request was such that the Department would not amend its recommendation, but if a reallocation were to occur, then Picacho Pecans would be considered at that time. In May 1988, the State Land Department, as the landowner, requested to be considered during any reallocation.

The leased acres meet conditions for receiving CAP non-Indian agricultural water. Groundwater overdraft in the area is severe, and it appears that there is an insufficient economically available supply to continue irrigation of the existing pecan grove.

Therefore, the Department is recommending that the land leased to Picacho Pecans be included in the CAP non-Indian agricultural water reallocation.

Rick Aguirre (Lease #01-077685). This land is also located in southern Pinal County in the Tucson AMA. It is comprised of approximately 600 acres, with 423 acres determined to be eligible to receive CAP agricultural water. Conditions related to this lease receiving a CAP allocation are almost identical to that of Picacho Pecans. At the time of the Department's 1982 recommendation, there was some uncertainty over the ownership of the land. Shortly after the initial recommendations but before the Secretary's decision, Rick Aguirre requested that this lease receive an allocation of CAP agricultural water. As late as October 1989, the State Land Department, as the landowner, expressed support for this request.

This lease also meets the conditions for receiving CAP non-Indian agricultural water. Therefore, the Department is recommending that the land leased to Rick Aguirre be included in the CAP non-Indian agricultural water reallocation.

McMullen Valley Water Conservation and Drainage District

McMullen Valley is located about 80 miles northwest of Phoenix. The valley is approximately 48 miles long by 15 miles wide. Three communities, Aguila, Salome, and Wenden, exist within the valley. The valley is bisected by Centennial Wash, a major ephemeral stream, which is a tributary of the Gila River. Centennial Wash has little impact as a source of surface water to the valley, flowing only during major storm events. It is estimated that Centennial Wash recharges approximately 500 acre-feet a year into the valley's groundwater supply.

In the early 1900s, inhabitants of McMullen Valley began to pump groundwater for agricultural irrigation. Today, there are approximately 34,000 acres of developed farmland within the valley. The cultivated acreage is concentrated in two main areas: the Salome-Wenden area, which is in the western portion of the valley and the Aguila area, which is about 25 miles east along the Centennial Wash. The two agricultural areas are about equal in size. Due to the large amount of agricultural irrigation in the valley, the water level decline has been as high as 10 feet per year.

On September 19, 1989, McMullen Valley Water Conservation and Drainage District (MVWCDD) requested that its land be granted an allocation of CAP agricultural water. MVWCDD is generally located within the Salome-Wenden area. However, approximately 2,500 acres of MVWCDD is outside of McMullen Valley. This area is known as the "Fulmer Ranch" and is located southeast of Salome along the Centennial Wash in the Harquahala INA.

On a district-wide basis, the City of Phoenix owns about 77 percent of MVWCDD. For MVWCDD land within the valley, it owns about 94%. The city purchased farmland in the area with the expressed intent of retiring the irrigation use and exporting groundwater to meet future municipal demands. The city's plans call for continuing irrigation for several years before the lands are retired and groundwater exported. The city supports MVWCDD's securing a CAP allocation, because from a water management point of view, the use of CAP water until lands are retired will help preserve the groundwater supply. MVWCDD claims that approximately 13,031 acres of land have a 1958-1968 history of irrigation and therefore should be eligible to receive CAP water. The Department's initial review of the area has indicated that only about 12,000 acres meet the CAP eligibility requirements.

Initial indications are that MVWCDD would deliver its CAP water through a direct connection with the Hayden-Rhodes Aqueduct. The connection could be 15 to 20 miles in length and could require a pump lift of 600 to 800 feet. The additional distribution system and energy required to deliver CAP water to MVWCDD land will significantly increase MVWCDD's per acre-foot cost of CAP water when compared to other CAP agricultural users.

Groundwater levels have been declining in McMullen Valley. Figure 2 shows a change in groundwater levels in selected wells in the area. The CAP non-Indian agricultural water was intended to help reduce Arizona's dependency on groundwater in central Arizona. Clearly MVWCDD qualifies for the delivery of CAP non-Indian agricultural water based on groundwater availability.

While MVWCDD is in an area in need of an alternative water supply, there are issues which the Department recommends must be resolved before a subcontract for CAP non-Indian agricultural water is offered. Financial feasibility is a concern. Because of the location of the district relative to the Hayden-Rhodes Aqueduct, it appears that a delivery and distribution system would be expensive to construct and operate. A subcontract should not be offered unless a delivery and distribution system is proven to be financially feasible for the purpose of agricultural irrigation.

The allocation of Hoover B electric power was made to allottees with the provision that the allotments may be recaptured by the Central Arizona Water Conservation District (CAWCD) to be used by the Project. When contracts for this power were executed, a provision was included that provided that CAWCD shall relinquish any Hoover power recaptured from users who were defined contractually as "Eligible Entities" with regard, in part, to entities which were named to receive an allocation of CAP water in the Record of Decision of February 10, 1983. Because MVWCDD was an "Eligible Entity," its contract provides that relinquished Hoover B power will be available to MVWCDD. However, the Department does not support MVWCDD's having both an allocation of CAP water and Hoover B electric power, a benefit other districts that were allocated CAP water do not have. Therefore, the recommendation is that MVWCDD commit to giving up rights to Hoover B power as a condition to being offered a CAP subcontract.

Much of MVWCDD is outside any established INA or AMA. Therefore, there is no prohibition against using groundwater to bring new lands under irrigation. Section 304(c)(1) of the Colorado River Basin Project Act requires that there be measures in effect to control expansion of irrigation from the aquifer in a subcontractor's area. The Department believes that this will require the creation of an AMA or INA in the basin. However, there may be other mechanisms which might allow compliance with Section 304(c)(1). Regardless of the mechanism, before a

FIGURE 2

WATER LEVEL DATA

(McMullen Valley Area)

LEGEND



McMULLEN VALLEY WATER
C.D.D. BOUNDARY

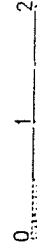


IRRIGATED ACRES

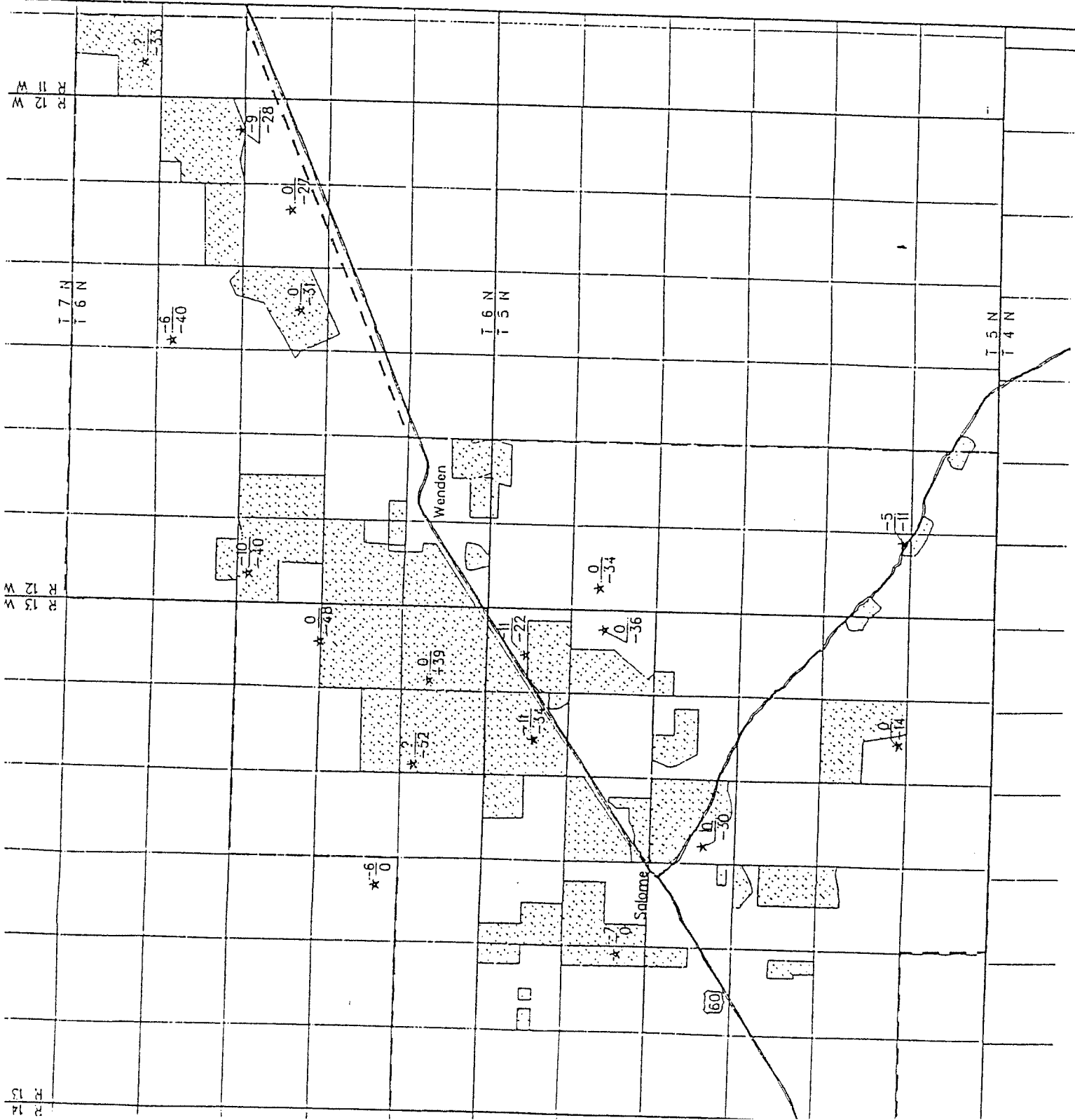
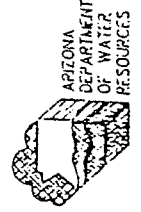
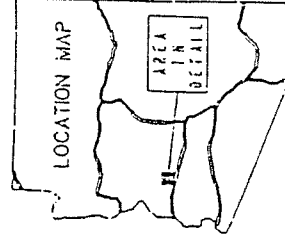
★-10 Water level change 1988-89
★-10 Water level change 1980-89



SCALE IN MILES



Gene H. Bohnee
Jan. 9, 1991



subcontract is offered, MVWCDD must demonstrate to the satisfaction of the Secretary and the Department that there will be compliance with Section 304(c)(1).

Comments were received that CAP water could not be allocated to MVWCDD because it was outside of the CAWCD service area. This recommendation is permitted by Section 304(b)(1) of the Colorado River Basin Project Act and by Section 8.8(b)(v) of the contract between the United States and CAWCD for the delivery of water and repayment of costs of CAP as amended. That contract clause, based on the federal statute, specifically provides that if the Secretary agrees, CAP water may be delivered outside the CAWCD service area. The Department realizes that such a delivery was not permissible under the original language of the contract and that the amended contract has not yet been judicially confirmed. This recommendation is based upon the assumption that the amended contract will be confirmed. Arizona law also contemplates delivery of CAP water outside the CAWCD service area.

Roosevelt Irrigation District

The Roosevelt Irrigation District (RID) was formed to serve farmland located in the south central portion of Maricopa County. RID is west of the City of Phoenix and north of the Gila River within the Phoenix AMA. Recently, the City of Goodyear, located near the eastern portion of RID, strip annexed a large portion of the district for future municipal expansion. RID serves approximately 34,500 acres of farmland. The district has been exclusively dependent on groundwater since its inception. Water is pumped from wells located within RID and from RID wells located in the Salt River Project (SRP). Pursuant to a 1921 contract with SRP, RID is to pump not less than 70,000 acre-feet of groundwater per year from within SRP boundaries. The purpose of this contract was to provide drainage pumping to lower high groundwater conditions inside SRP. Wells located within SRP have historically pumped approximately 133,000 acre-feet per year. The SRP-RID contract of 1921 will expire on August 25, 2020. The contract is not expected to be extended.

Pursuant to the SRPMICSA, RID has agreed to receive up to 30,000 acre-feet of reclaimed effluent per year. The reclaimed effluent would be made available through a surface water-groundwater effluent exchange involving the Salt River Pima-Maricopa Indian Community, SRP, City of Phoenix, and RID, once Arizona's laws are amended to permit such an exchange. However, the effluent exchange agreement pursuant to SRPMICSA is scheduled to expire by 2020, if not sooner, due to the urbanization of SRP lands.

During the initial CAP allocation RID received an entitlement of the non-Indian agricultural supply of 2.61%. RID representatives have stated that they recognized the benefit of

accepting CAP water, but there was no opportunity for the economical delivery of the supply to the district's distribution system. Therefore, the initial contract offer was declined.

To implement the anticipated exchange under the SRPMICSA a delivery system will be constructed from the municipal treatment plant to RID. The City of Phoenix has expressed interest in using this system for additional effluent exchanges with RID. If RID had a CAP allocation, the City of Phoenix would make effluent available to RID in exchange for the delivery of RID's CAP allocation to the city. Because of this potential exchange, RID now has a feasible way to receive CAP water and it has reapplied for a CAP allocation.

Local groundwater conditions in RID have been relatively stable. This condition exists primarily because the district has been receiving an average of over 130,000 acre-feet of groundwater per year pumped from beneath SRP lands.

Both SRP and RID are in the Phoenix AMA which is an area of critical groundwater overdraft. For the RID area to continue to maintain a stable groundwater condition, some water needs to be imported. Therefore, RID has been included in the reallocation.

The Department believes, given RID's location southwest of the Phoenix metropolitan area along the Gila and Agua Fria Rivers, that even after delivery of water to RID from SRP lands terminates, there will be some locally available supply. It is estimated that this supply will be approximately 83,000 acre-feet, made up of both groundwater and effluent.

The projected availability of groundwater is based on the fact that although pumping occurs in the area today, the groundwater table remains somewhat stable. In the future, given RID's location and the natural groundwater flow in the basin toward this area, the Department believes that without some pumping in this area water logging could occur in the future. This water logging would be similar to that currently being experienced in the Buckeye area.

The assumption regarding effluent availability is not based on any contractual commitment, but rather the belief that because of the location of the district as related to the municipal treatment plants, and because there will be facilities in place to deliver effluent to the district, some effluent supply will be available regardless of the amount of CAP supply under contract.

The Department's recommended allocation assumes that 15,370 acres (83,000 acre-feet ÷ 5.4 acre-feet per acre) will be irrigated from these locally available supplies. This leaves 19,130 acres within RID to be included as the base for the non-Indian agricultural water reallocation. These estimates of

locally available supply should not be considered as a "safe yield" allocation. They are assumptions and estimates based on information available at this time.

Much of RID's land will be subject to future urbanization. Article 4.3(i) of the standard agricultural subcontract contains provisions for conversion from agricultural use to municipal and industrial uses when land is urbanized. Because local supplies are effluent and groundwater, the Department recommends that Article 4.3(i) of RID's subcontract allow the full conversion of one acre-foot per acre be without reduction to its CAP eligible acres because of locally available water supplies.

RESPONSE TO COMMENTS

The Department received a number of oral and written comments related to all aspects of the reallocation. Many were specific to a particular entity. Others were general in nature. The comments and responses are discussed in this section.

Loss of Municipal and Industrial Conversion Opportunities

Some of the communities in the western portion of the Salt River Valley submitted comments expressing concern over loss of opportunities to convert from agricultural use to municipal and industrial use when irrigated land is developed due to the fact that agricultural districts in their area had declined subcontracts. Cities where growth is projected to take place over irrigated agricultural lands claim they anticipated conversion rights as a part of the future supply. They requested this conversion be allowed as if the agricultural supplier had signed a contract.

Any supposed impact to municipal and industrial supplies from loss of conversion rights would occur in areas where an entity received an allocation of CAP agricultural water and later declined an offer to contract. Specific allottees in the West Salt River Valley which declined subcontracts are RID, Maricopa County Municipal Water Conservation District #1, and McMicken Irrigation District.

The Department is not recommending any provision to provide a municipal and industrial supply to the cities affected as claimed. Two aspects of the 1982 allocation recommendations and subsequent provisions of the agricultural subcontracts are contrary to the comments received. First, cities with projected growth onto agricultural areas with CAP allocations did receive a

municipal and industrial allotment for the growth expected on the irrigated lands. The agricultural subcontracts offered but later declined contained the provision that conversions would not take place until an area equal to the area where growth was projected is taken out of production by development. Second, conversions in some of the areas of concern were limited because of a dependable surface water supply.

In addition, the Department cannot support a provision to provide for a conversion right for municipal and industrial growth on lands that are not served CAP agricultural water. This in effect would allow any development on agricultural land in the CAP service area a right to a municipal and industrial entitlement.

The basic concern of those commenting on this matter may be that some communities have lost the opportunity to receive municipal and industrial conversion rights in areas where growth may occur but was not projected in 1982. The Department has always recognized this potential. The 1982 recommendation to Secretary Watt anticipated that this would occur and asked to be able to adjust any inequities in a reallocation of uncontracted municipal and industrial water. The Secretary's 1983 decision indicated that there would be such a reallocation. The Department believes that this is the appropriate approach to resolve this matter.

The Reallocation Should Replace Uncontracted CAP Water within the Same AMAs

Comments from water users in the Phoenix and Tucson areas have focused on a concern that water originally allocated to agricultural and municipal and industrial users in the two "safe yield" AMAs was not contracted for, thus creating the possibility that the supply would be reallocated elsewhere in Central Arizona.

A total of 17.73% of the 1983 agricultural allocation was for entities in the Phoenix AMA which chose not to contract. In the Tucson AMA, 5.83% is uncontracted, assuming FICO does contract for water.

The concern in these areas is that they are "safe yield" AMAs and require as much CAP water as possible to reduce groundwater overdrafting in order to achieve the groundwater management goals. Areas which have chosen not to contract for CAP supplies will continue to deplete the groundwater supply, thus hindering the efforts to reach safe yield.

While the Department is aware of these concerns, it sees no way in this reallocation of CAP non-Indian agricultural supplies that water can be forced on an entity unwilling to contract for a supply.

Allottees Must Demonstrate Financial Capability

Comments were made that no allocations should be made to any entity which does not currently have an allocation unless it is clearly demonstrated that the delivery of water for irrigation is financially feasible.

It was not possible to complete a feasibility study for any new entity before this recommended reallocation was completed. Nevertheless, the Department agrees that water should not be offered to any entity unless it is financially capable of putting the supply to an agricultural use.

Therefore, the Department is recommending that no contract be executed until a feasibility study is completed. The study must demonstrate that the potential subcontractor is financially able to distribute CAP water for agricultural purposes to eligible lands and that the distribution and agricultural use of CAP water is economically feasible. Any study should follow the criteria used to support requests for loans for CAP non-Indian agricultural distribution systems.

Water Should Be Used Directly for Irrigation

Comments were made suggesting that any CAP water should be put directly to use and not be delivered for irrigation through an exchange for effluent. Such an exchange is the general method through which three of the entities plan to put their contract entitlements to use.

Water exchanges are often a good tool to enhance water management. There are no obvious legal impediments in either state or federal law which would prohibit delivery of CAP water through exchange as long as groundwater within an AMA or INA is not involved. In fact, some municipal and industrial allocations were predicated on such an exchange. Therefore, the fact that CAP water would be delivered through an exchange was not made a condition for deciding if an entity should receive an allocation.

Exclude New Entities

The Department has recommended that the Secretary allocate CAP water to non-Indian agricultural entities which were not included in the original allocation. Comments were received that opposed this position. The Department's review of this issue revealed no legal bar to including new entities in the reallocation. In fact, if no new subcontractors were to be involved, the agricultural subcontracts would provide the formula for redistribution.

However, the 1983 allocation and the subcontract for CAP non-Indian agricultural water provide that the Department will

recommend a reallocation. At the direction of Congress in SRPMICSA, the Secretary requested that the Department recommend a reallocation. The Department has, therefore, included new entities in consideration of the recommendation for reallocation so as to allow for equitable distribution of CAP water to those non-Indian agricultural users who have the need to use the water.

Make Allocations to Indian Reservations or Hold for Settlement Negotiations

The Department has received requests to recommend reallocation of non-Indian agricultural CAP water for use on tribal reservation land. The Department has not made such a recommendation. The 1983 Notice of Final Water Allocation to Indian and Non-Indian Water Users, signed by Secretary Watt, allocated a finite amount of CAP water for Indian community use, a finite amount of CAP water for municipal and industrial use, and the remainder to non-Indian agricultural use. It would be contrary to the decision by the Secretary to alter this tripartite division by recommending that non-Indian agricultural water be allocated for Indian community use.

Further, Section 4.13(b) of the non-Indian agricultural CAP subcontracts and Section 11(h) of the SRPMICSA both provide that uncontracted-for water shall be reallocated for non-Indian agricultural use. A recommendation for reallocation for Indian community use would be inconsistent with these provisions. The Department, therefore, has not recommended reallocation to these entities.

For these same reasons, the Department has not adopted the suggestion put forth by some interests that these uncontracted-for waters be held back for Indian claim settlements. The Department does not recommend that the contracting process be delayed to leave this water available for settlement claims.

Compliance with the Administrative Procedures Act

One comment was received indicating that the Department must follow the formal rule making procedures of Arizona's Administrative Procedures Act before making its recommendation to the Secretary. The Department does not agree for the following reasons.

In making a recommended reallocation, the Department is not making a statement of general applicability that implements, interprets, or prescribes law or policy. The Department has no official power to implement, interpret, or prescribe federal law. That power is reserved to the Secretary. It would be anomalous, indeed, for the Department to undergo a formal rule making process to "establish" criteria which can be ignored or rejected by the person in whom the discretion is vested.

Rather than implementing policy, the Department is evaluating the factual circumstances of individual applicants on a case by case basis and summarizing its findings in a recommendation to the Secretary who, in his discretion, will decide ultimate entitlement. The process is a very narrow function of the Department, it is not a statement of general application susceptible to the rule making process.

Nor is the recommended reallocation a description of the formal procedure or practice requirements of the Department. To the contrary, the evaluation process is a specialized situation to be dealt with on a case by case approach for a limited number of applicants.

Finally, the recommended allocation is clearly not a contested case as that term is defined in state statutes. The Department is not required by law to determine the "legal rights, duties, or privileges" of a party after a hearing. Indeed, the Department is not vested with the power to make such a determination at all, but is instead limited to "consult, advise, and cooperate" with the Secretary.

Aside from the legal reasons for excusing a mere recommendation from the rule making process, the practical aspects of rule making also militate against the request. The delay in adopting formal procedures without the benefit of informal experience would be inordinate and the process itself would suffer as a result. The Department is convinced that the individual review of each application, together with the invitation for public comment on the process as a whole, has operated to assure an expeditious and fair evaluation of data to be summarized and transmitted to the Secretary for final allocation.

The Dependable Supply to RWCD Should Be Reduced

Both the SRPMICSA and the Fort McDowell Indian Community Water Rights Settlement Act of 1990 provide that RWCD shall provide a portion of its water supply to the Indian communities. A total of 11,200 acre-feet is involved, with 8,000 acre-feet going to the Salt River Indian Reservation and 3,200 to the Fort McDowell Indian Reservation. It is argued that this is a loss of water which was previously a reliable supply to RWCD and, therefore, the acreage in the district determined to be irrigated with a locally available dependable supply should be reduced. This would have the effect of increasing the allocation of CAP water to RWCD.

The Department does not accept this argument and has chosen not to adjust the RWCD district acreage supplied from local water sources for two reasons. First, the two water right settlement agreements involved are not complete. While the Department

believes they will be implemented, there remains at this time some conditions to the settlements which must be satisfied.

Secondly, and most important, the Department does not believe that RWCD should be compensated or "made whole" for their contribution to these water rights settlements at the cost of other agricultural subcontractors. To do so would be unfair to other subcontractors who in future settlements may be required to give supplies with no opportunity for compensation, such as RWCD requests. Given the uncertainty of future settlements, the Department cannot estimate what future compensation may be required so that estimates could be included in its recommendations. Furthermore, to the extent that the Department participated in these settlements, it was not aware of any expectation by RWCD that it would receive additional CAP supplies to offset what was given up to the Indian communities.

A comment was also received that RWCD's allocation should be reduced to reflect the provision of Exhibit 12.3 of the SRPMICSA. Paragraph 12(c) of this exhibit provides that a portion of any supply received by RWCD in a reallocation would go to the Salt River Valley cities. The Department does not believe that this provision needs to be a consideration in this reallocation. This provision in effect is a contractual agreement between RWCD and the cities to be consummated after the reallocation is completed.

Effects of RRA Should Be Considered

Some of the applicants requesting an allocation are entities which contain large landholdings, which would appear to have substantial acreages of excess lands as defined in the Reclamation Reform Act. The Department has some concerns about this issue. Nevertheless, the extent of excess lands in any entity's service area is a "moving target." Mechanisms are available for excess landowners to dispose of such lands, and most owners are expected to take appropriate action to allow full use of available CAP supplies. Therefore, it would be difficult and probably inequitable to attempt to adjust any recommended allocation of CAP water because of what is expected to be the amount of excess, or ineligible, lands in a particular service area. The Department, therefore, did not consider RRA issues as a determinative factor in the allocation.